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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/138,807	08/21/1998	RAMANATHAN RAMANATHAN	INTL-0083-US	4545
21906	7590	05/07/2004	EXAMINER	
TROP PRUNER & HU, PC 8554 KATY FREEWAY SUITE 100 HOUSTON, TX 77024			SALCE, JASON P	
			ART UNIT	PAPER NUMBER
			2611	15

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/138,807

Applicant(s)

RAMANATHAN, RAMANATHAN

Examiner

Jason P Salce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-4, 10-18 and 24 is/are rejected.
- 7) ☒ Claim(s) 5-9 and 19-23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/11/04 has been entered.

Response to Arguments

2. Applicant's arguments filed 1/5/04 have been fully considered but they are not persuasive.

All arguments have been answered in the Advisory Action dated 2/19/04 and are repeated below.

Applicant argues that Kenner and Kapoor both fail to disclose an on going tracking from the point in time when a first marker is inserted. The examiner notes a "round-trip elapsed time" calculation of a test packet at Column 27, Lines 58-59. Even though the applicant states that Kenner does not describe the details of this calculation, a round-trip elapsed time can only be calculated if a packet is sent to a destination and returned to the same destination. Such a calculation cannot be done unless the system knows which packet is the "test packet" and is therefore marked as such (using a "packet id", commonly known as a PID (packet identification) in the art).

Applicant also argues that Kapoor fails to disclose an on going tracking of a video

transmission from the point in time when a first marker is transmitted. The examiner notes that Kenner is used to teach this limitation (see arguments above) and that Kapoor is used to teach an on-going count of bits. However, the examiner notes that the suggested amendment has removed the limitation of the "on-going count of bits", and therefore Kapoor and Kenner both read on the claims under 35 U.S.C. 102.

Applicant also argues that Kapoor only teaches a counter that counts data packets post transmission, after being received at a second node. The examiner notes that every node contains a congestion controller (for example, there are two satellites (20 and 21), where each satellite contains a congestion controller). Each congestion controller detects when congestion is eminent and then sets a bit to any packet that goes into that node's congestion controller (satellite 20 for example), then when another node (satellite 21 for example) detects this bit, a counter is incremented. Therefore, Kapoor discloses a counter that tracks a transmission (a packet marked for congestion at satellite 20 and sent to satellite 21) from the point where the first marker is inserted (satellite 20).

Applicant also argues that in order to reject a claim on the basis of inherency, the missing descriptive matter necessarily must be present in the reference. The examiner notes that this has been met by the passages cited in the previous Office Action (see Column 2, Lines 43-67 and a content provider at Column 1, Lines 58-61). Further note Column 8, Lines 14-16 for the receiver being a STB that receives TV signals and Column 21, Lines 19-25 for running a browser on this STB, therefore web content would have to be sent to the set top box (see Column 21, Lines 25-28) in order to even use

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the browser to view web content (see Column 22, Lines 63-65).

Applicant also has challenged the examiner's use of Official Notice for providing a log-in server, reporting a transmission to said log-in server and allowing a third party to access said log-in server to receive transmission reporting. As stated in the previous Office Action, Kenner discloses reporting a transmission, as well as Kapoor (see rejection of claim 11 in the previous Office Action). Kenner and Kapoor fail to teach a login server, reporting a transmission to said login server and allowing a third party to access said login server to receive transmission reporting. Hullinger (U.S. Patent No. 6,295,092) discloses such a server in a system that provides a report of transmissions made by the system (see Figure 1 for a user interface machine 24 for reviewing transmission data processed by other components in the system (Figure 1), also note Column 11, Lines 6-45 for the details of such charts and graphs made available to the user). Also note that that the user interface machine contains a Windows operating system, which inherently allows a user (Administrator, the computer owner, or any third party) to log in and out of the machine. The examiner has provided a section of the Microsoft Windows Operating System book (see pages 16-17 and 77-81 in Chapter 2 for providing this feature, as well as tracking network activity for future reporting to a user). The motivation to do so has been stated in the previous Office Action as enabling a cable broadcast system to monitor network activity at off-peak hours (which is used to determine the most effective programming to broadcast at that hour).

Therefore, the rejection from the Final Office Action dated 11/5/03 stands and is repeated below, with added emphasis of the support of the examiner's statement of Official Notice.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 11 and 16 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kapoor (U.S. Patent No. 5,751,969).

Referring to claims 11 and 16, Kapoor teaches setting a marker in the video transmission (see Column 4, Lines 52-55 for setting a congestion indicator bit and Column 2, Lines 63-65 for the transmission being a video transmission).

Kapoor also teaches tracking the transmission after said marker, said tracking on-going from the point in time when the first marker is transmitted (see Column 4, Lines 62-67 for an on-going tracking of a transmission from a source to a destination). The examiner notes that every node contains a congestion controller (for example, there are two satellites (20 and 21), where each satellite contains a congestion controller). Each congestion controller detects when congestion is eminent and then sets a bit to any packet that goes into that node's congestion controller (satellite 20 for

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example), then when another node (satellite 21 for example) detects this bit, a counter is incremented. Therefore, Kapoor discloses a counter that tracks a transmission (a packet marked for congestion at satellite 20 and sent to satellite 21) from the point where the first marker is inserted (satellite 20).

Kapoor also discloses reporting the transmission (see Column 6, Lines 49-59).

4. Claims 2-4, 11 and 16-18 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kenner et al. (U.S. Patent No. 5,956,716).

Referring to claims 11 and 16, Kenner discloses setting a first marker in the video transmission (see a test packet at Column 27, Lines 58-59 and note that it is inherent that all packets contain different fields (markers), and therefore the system must know the difference between a test packet and a regular video data packet, and therefore is marked as such). Therefore, Kenner sets a marker in the packet to identify the packet as a test packet.

Kenner also discloses tracking the transmission after the first marker (see Column 27, Lines 44-46 for a discussion of tracking the demand of video clips from remote clients, and Column 27, Lines 58-59 for performing this tracking by sending a test packet (which contains a marker as discussed above)).

Kenner also discloses providing a time elapsed from the point in time when the first marker is transmitted (also see Column 27, Lines 58-59 to teach that the test packet is used to calculate a round-trip elapsed time).

Kenner also discloses that this transmission (sending a test packet and calculating a response time (elapsed time) is reported to the PIM 64 (see Column 26,

Lines 34-39 for a discussion of how the PIM 64 determines which SRU (local or remote) is used to obtain the desired video clip, and Column 27, Lines 50-57 for a teaching of determining the closest remote SRU 92 by the test packet technique discussed above).

Claim 2 corresponds to claim 11, with the additional limitation of receiving web content transmission and accompanying television broadcasts from a content provider. Column 2, Lines 43-67 of Kenner teaches acquiring web content and also video on demand programs off the Internet. The content provider is disclosed as an ISP at Column 1, Lines 58-61). Therefore, it is inherent that web content as disclosed by Kenner can be accompanied by television broadcasts.

Claim 3 corresponds to claim 2, and additionally discloses inserting the first marker into the combined broadcast. The examiner notes the teaching in claim 11, where a packet (test packet or regular audio/video or web content packet contains a marker to identify the type of packet being transmitted). Therefore, it is inherent that a first marker exists in all packets in Kenner's system.

Claim 4 corresponds to claim 2, and additionally discloses receiving web content from a content provider (disclosed by Kenner at Column 1, Lines 58-65), combining the web broadcast content with the television programming (see rejection of claim 2) at a broadcast encoder (PIM 64 in Figure 4) and inserting the first marker at the broadcast encoder (see Column 27, Lines 44-46).

Referring to claims 17-18, see rejection of claims 2-3, respectively.

Claim Rejections - 35 USC § 103

5. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Kapoor (U.S. Patent No. 5,751,969).

The examiner notes that Kenner or Kapoor disclose all of the limitations in claims 11 and 16 (see above).

Kenner fails to disclose providing an on-going count of bits transmitted. Kapoor teaches setting a first marker in a video transmission (see Column 4, Lines 52-55). Kapoor also discloses tracking the transmission after the first marker (Column 5, Lines 15-19). Kapoor also discloses reporting the transmission (Column 6, Lines 53-59). Kapoor continues to disclose the limitation that is unsupported by Kenner of providing an on-going count of bits (see counting the marker set in a data packet at Column 5, Lines 48-49).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the PIM 64 used to acquire a video clip from a number of different remote SRUs, as taught by Kenner, using the congestion controller, as taught by Kapoor, for the purpose of managing the network traffic through nodes (PIMs and SRUs) to avoid traffic congestion (Column 1, Lines 53-54).

6. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mao et al. (U.S. Patent No. 6,459,427) in view of Kapoor (U.S. Patent No. 5,751,969).

Referring to claim 12, Mao discloses an encoder that combines different transmissions (see Column 5, Lines 40-42 for a discussion of the MOREGATE™ server 80, which is capable of combining program synchronous web content onto an MPEG

video stream). Mao also discloses re-assigning PID (packet ID) values (setting a marker) by the re-multiplexer 70 (see Column 5, Lines 18-24).

Mao fails to teach a counter for tracking the transmission from the point where the first marker was inserted. Kapoor teaches both setting a first marker (Column 4, Lines 52-55) as well as teach the missing limitation of a counter for tracking a transmission from the point where the first marker was inserted (Column 5, Lines 15-19 for tracking the first transmission after a first marker was set and Column 5, Lines 48-49 for incrementing a counter when a marker is detected in a packet).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the MOREGATE™ server 80, as taught by Mao, using the congestion controller 26, as taught by Kapoor, for the purpose of managing the network traffic through nodes (MOREGATE™ server 80 and set-top box 150) to avoid traffic congestion (Column 1, Lines 53-54).

Claim 13 corresponds to claim 12, with the additional limitation of a broadcast encoder coupled to a content provider. Mao discloses an HFC Headend 10 and an MPEG-2 remultiplexer 70 coupled to the HFC Headend 10 in Figure 1.

Claim 14 corresponds to claim 13, with the additional limitation of the broadcast encoder setting the first marker in the video transmission (see Column 5, Lines 18-24 for re-assigning a PID (first marker) in an MPEG stream).

Claim 15 corresponds to claim 13, with the additional limitation of the content provider setting a first marker in the video transmission (note that the HFC Headend 10 is equated to the content provider, which contains the remultiplexer 70 (broadcast

encoder) coupled to the HFC Headend 10, therefore the content provider also sets the first marker).

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (U.S. Patent No. 5,956,716) in view of Hullinger et al. (U.S. Patent No. 6,295,092).

Referring to claim 10, Kenner teaches all of the limitations in claim 11, but fails to teach a log-in server for allowing a third party to access transmission reporting. Kenner fails to teach a login server, reporting a transmission to said login server and allowing a third party to access said login server to receive transmission reporting. Hullinger discloses such a server in a system that provides a report of transmissions made by the system (see Figure 1 for a user interface machine 24 for reviewing transmission data processed by other components in the system (Figure 1), also note Column 11, Lines 6-45 for the details of such charts and graphs made available to the user). Also note that that the user interface machine contains a Windows operating system, which inherently allows a user (Administrator, the computer owner, or any third party) to log in and out of the machine. The examiner has provided a section of the Microsoft Windows Operating System book (see pages 16-17 and 77-81 in Chapter 2 for providing this feature, as well as tracking network activity for future reporting to a user).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the transmission tracking system, as taught by Kenner, using the log-in server, as taught by Hullinger, for the purpose of enabling a cable broadcast system to monitor network activity at off-peak hours (which is used to determine the most effective programming to broadcast at that hour).

Allowable Subject Matter

8. Claims 5-9 and 19-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 3, 2004


VIVEK SRIVASTAVA
PRIMARY EXAMINER

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